Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal from Order No. 317 of 2002
(Old No. 631/1991)

United India Insurance Company Ltd.,
Tikonia, Haldwani, District-Nainital.

..... Opp.party/appellant

Versus

(1)Smt.Maijida Begum widow of late Mohd.Yunus,
(2)N.Irfan
(3)Km.Farat Deeba
(4)N.Faizan
(5)Km.Nazia
(6)Km.Fauzia
all sons & daughters of late Mohd.Yunus,
Residents of Line No.7, Azad Nagar, Haldwani,
District-Nainital.

.....Claimants/Respondents.

(7)Paramjit Singh s/o Niranjan Singh,
R/o House No.14/25 Govindpura,
Haldwani, District-Nainital,
(8)Vijay Singh S/o Uchap Singh,
R/o Chandni Chowk, Ghirdaura,
P.O. Dawal char, Tehsil-Haldwani,
District-Nainital.
(9)Jiwan Singh S/o Lal Singh,
R/o Subhash Nagar, Haldwani,
District-Nainital
(driver of Truck No. URN 659).

..... Opp.parties/Respondents.

Sri K.K. Shah, learned Senior Advocate for the appellant,
Sri I.S.Mehra, learned counsel for the claimant/respondents.

Date: 25th Aug., 2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/appellant-United India Insurance Company against the judgment and award dated 12.4.1991 passed by Motor Accident Claims Tribunal/I Addl. District Judge,

Nainital in Motor Accident Claim Case No.130 of 1988, by which the claim petition has been decreed for a sum of Rs. 2,30,000/- as compensation against the appellant alongwith interest.

2- Brief facts giving rise to this appeal are that deceased Mohd.Yunus was travelling on tractor No. UTF 604 from Azad Nagar towards Chandnichowk Gurudwara on 18.10.1987 in connection with his business of foodgrain. It was alleged that the tractor was being driven on its left side cautiously. At the same time a Truck bearing registration No. URN 659 came from Rudrapur side towards Haldwani. The said truck, which was being driven rashly and negligently, dashed against the tractor on 18.10.1987 at about 3:00 P.M. near Peoples College at Haldwani-Rampur road. Due to grave impact in the said accident the deceased Mohd.Yunus received grievous injuries on his body. He was admitted for his injuries in Civil Hospital, Haldwani from where he referred to better treatment. Again he was admitted in Ram Manohar Lohia Hospital, Delhi on 20.10.1987 and he died on 28.10.1987 due to injuries caused to him in the said accident. The deceased was 30 years of age at the time of accident and he was earning Rs. 2000/- per month from the foodgrains business. The claimants, who are the dependents of the deceased, filed a claim petition for compensation of Rs. 6,25,000/- which was allowed accordingly.

3- The Opp. parties contested the case before the Tribunal by filing their separate written statements. The Tribunal, on the pleadings of the parties, framed necessary issues, recorded evidence of the parties and fixed the liability to pay the compensation on the Insurance Company.

4- The learned counsel for the appellant pressed the appeal on the grounds that the vehicle insured with the appellant was a goods carrying vehicle and the maximum liability which could be imposed on the appellant-insurer could be Rs. 1,50,000/- and not beyond and further that compensation awarded is highly excessive inasmuch as without there being any proof of the income of the deceased the Tribunal has accepted the income of Rs. 2,000/- per month.

5- We have gone through the entire material on record and perused the impugned judgment. So far as the first contention of the learned counsel for the appellant is concerned, the Tribunal has not framed any issue on this point. It appears that the Insurance Company did not take this plea in its written statement before the Tribunal. In the case ***National Insurance Company Ltd., versus Keshav Bahadur and others, reported in (2004) 2 Supreme Court Cases, 370,*** the Apex Court has held in para-6 as follows:-

> "the liability of the insurer is limited as indicated in Section 95 of the Act. But it is open to the insured to make payment of additional higher premium and for the insurer to accept higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, and proof of payment of additional premium, the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability. A three-Judge Bench of this Court in *New India Assurance Co. Ltd. v. Shanti Bai, 1 (1995) 2 SCC 539* held as follows: (SCC pp.541-42, para 7).
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> *(i)* a comprehensive policy which has been issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third-party risk for an amount higher than the statutory limit;

(ii) that even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy, it is not obligatory for the owner of a vehicle to get it comprehensively insured; and

(iii) that the limit of liability with regard to third-party risk does not become unlimited or higher than the statutory liability in the absence of specified agreement to make the insurer's liability unlimited or higher than the statutory liability."

6- In view of above the parties have to prove that separate premium was being paid in respect of additional amount of liability in view of specified agreement between the insured and the insurer. We are of the opinion that the Insurance Company, if it so desires, can take recourse to recover amount beyond the liability, if it is established, from the insured/owner of the vehicle in question.

7- On the second contention, the Tribunal on the basis of documentary proof gave its finding that the deceased was 32 years of age at the time of accident and it has come on the oral evidence of P.W.1 & P.W.2 that the deceased was doing business of foodgrains and was earning Rs. 2,000/- per month from that business. We find that on the basis of the evidence, the learned Tribunal has rightly held the income of the deceased and calculated the loss of dependency on the aforesaid amount.

8. The appeal has no force on merit. However, the appellant Insurance Company after satisfying the entire award before the Tribunal may raise objection regarding the question of limited liability and the learned Tribunal shall decide this question after hearing the owner of the offending truck.

8- The appeal is disposed of accordingly. The amount, if deposited in the appeal, shall be remitted to the Motor Accident claims Tribunal concerned within a period of two months from today.

(B.S. Verma, J.) **(P.C.Verma, J.)**

P.Singh